

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-217138 **DATE:** February 12, 1985  
**MATTER OF:** Dohrman Machine Production, Inc.

**DIGEST:**

A contracting officer may not reject a small business firm's responsive bid based on a preaward survey finding that the firm will not furnish products of a small business manufacturer without first referring the matter to the Small Business Administration.

Dohrman Machine Production, Inc. (Dohrman), protests the rejection of its bid under invitation for bids (IFB) No. N00033-84-B-0154, issued by the Department of the Navy, Military Sealift Command for winch motor controllers. We sustain the protest.

The solicitation was totally set aside for small business and the protester was the only bidder. After bid opening on August 31, 1984, the Navy conducted a preaward survey of Dohrman's facilities. As a result of the preaward survey, the contracting officer notified the protester that its bid was rejected for not meeting the small business size standard applicable to the procurement. The contracting officer stated that, because Dohrman's preaward survey approval was based upon the supply of items manufactured by a large business, Dohrman did not meet the small business size standard requirements for manufacturing industries under Federal Acquisition Regulation (FAR), § 19.102-3, 48 Fed. Reg. 42,102, 42,244 (1983) (to be codified at 48 C.F.R. § 19.102-3). FAR § 19.102-3 provides that:

"A concern offering to furnish a product it did not manufacture is small if--

- (a) It has no more than 500 employees;
- and
- (b) It is offering to furnish products of a small business manufacturer or producer . . . ."

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Meanwhile, the Navy issued an unrestricted solicitation for the same winch motor controllers to have been purchased under the original IFB. The Navy awarded a contract to a large business manufacturer under the unrestricted solicitation on December 20.

Dohrman states that winch motor controllers are only manufactured by large businesses, and notes that it suggested to the preaward survey team that, depending upon the Navy's preference, it would either assemble motor controllers from parts obtained from the manufacturer or purchase and provide complete motor controllers. According to the protester, the preaward survey team said that it could give the company a better recommendation if the company subcontracted most of the work to the manufacturer. Dohrman agreed to do so, and obtained a written quotation for complete motor controllers from the manufacturer, which it submitted to the procuring agency.

The protester implies that by assembling the components itself, it would have met the small business size status requirements for a nonmanufacturer. Dohrman also contends that under FAR § 19.102-3, quoted above, small businesses are not excluded from offering products manufactured by large businesses.

In responding to the protest, the Navy argues that whether or not Dohrman is a small business under the IFB should be decided by the Small Business Administration. We agree.

A bid on a total small business set-aside which fails to establish the intention of the bidder to furnish goods manufactured or produced by small business concerns is nonresponsive and the bidder is ineligible for award. A. G. Steel, Inc., B-210669, Apr. 1, 1983, 83-1 C.P.D. ¶ 310. In this case, Dohrman's bid was responsive since it included a certification that the company was an eligible small business and that the company would furnish supplies manufactured or produced by a small business. A bidder's representation regarding its size status must be accepted by the contracting officer unless another party challenges the representation or the contracting officer

has reason to question the representation. FAR § 19.301 (b), 48 Fed. Reg. 42,246 (1983) (to be codified at 48 C.F.R. § 19.301(b)). If the contracting officer questions a small business representation, he must file a protest with the SBA Regional Office for his geographical area, and the SBA determination is final unless appealed as provided in the regulations. FAR § 19.302(b), (c)(1) and (g), 48 Fed. Reg. 42,426 (1983) (to be codified at 48 C.F.R. § 19.302(b), (c)(1), and (g)); see Triad Associates, Inc.--Request for Reconsideration, B-214612.2, May 22, 1984, 84-1 C.P.D. ¶ 550.

The contracting officer decided that Dohrman's representation regarding its size status was in error without complying with her obligation to refer the matter to the SBA. She made no determination that Dohrman's price was unreasonable or that an award to Dohrman would be otherwise "detrimental to the public interest," thereby justifying withdrawal of the set-aside. FAR § 19.506, 48 Fed. Reg. 42,250 (1983) (to be codified at 48 C.F.R. § 19.506).

Consequently, the rejection of Dohrman's bid, which contained all the required certifications, was improper. See Y. T. & T. Corporation, B-208924, Mar. 22, 1983, 83-1 C.P.D. ¶ 283. The protest of the bid rejection is sustained. We do not believe, however, that corrective action is appropriate in view of the extent of performance under the contract awarded for the motor controllers under the unrestricted solicitation. We note further that while Dohrman's bid of \$276,240.50 was the only one received under the set-aside solicitation, the agency reports that it received six bids under the resolicitation and made award at \$181,887. Nevertheless, we are advising the Secretary of the Navy of our view by separate letter.

*for* *Harry R. Van Cleave*  
Comptroller General  
of the United States